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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/556,125

11/09/2005

Edward C. Meagher

2897 US

4353

50855

7590

06/17/2010

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EXAMINER

WEEKS, GLORIA R

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

06/17/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/556,125	<b>Applicant(s)</b> MEAGHER, EDWARD C.	
	<b>Examiner</b> GLORIA R. WEEKS	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. This action is in response to the amendment and remarks received on March 23, 2010.

***Claim Rejections - 35 USC § 102***

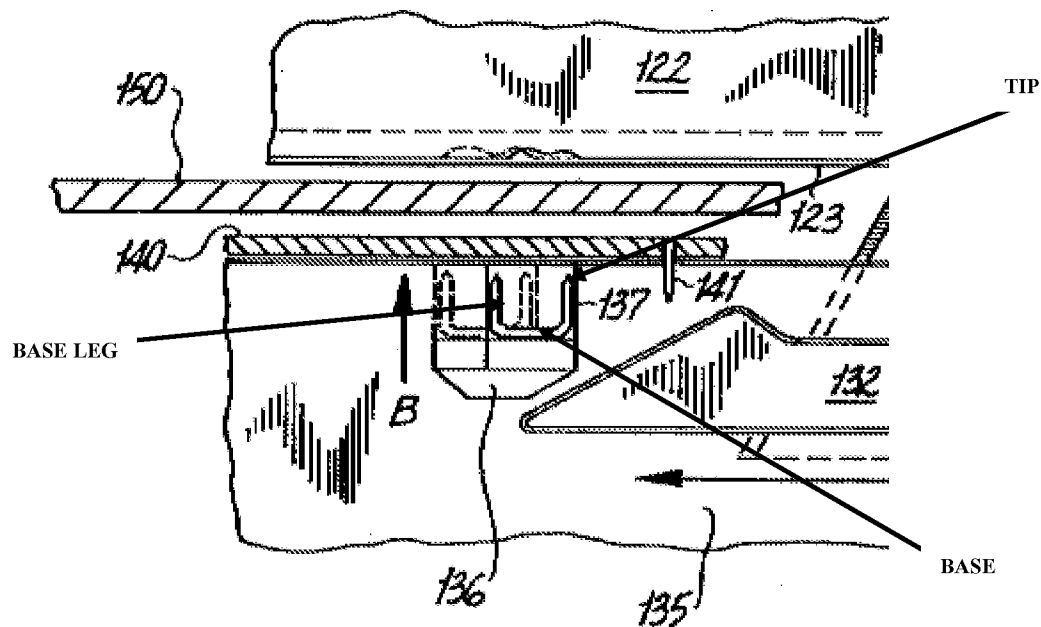
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by McKean et al. (USPN 6,045,560).

In reference to claims 1-5 and 7, McKean et al. discloses a surgical fastener system comprising: a fastener including a base leg and a support leg, the base leg being selectively deformable and including at least one traumatic tip for piercing tissue, and at least one capillary 140 having a reservoir (cellulose material) therein for retaining a liquid (column 4 lines 13-30, line 67- column 5 line 4) such that the capillary is rupturable (penetrated by tip) with the deformation of the surgical fastener; a loading unit 135; and an actuator 132.



### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

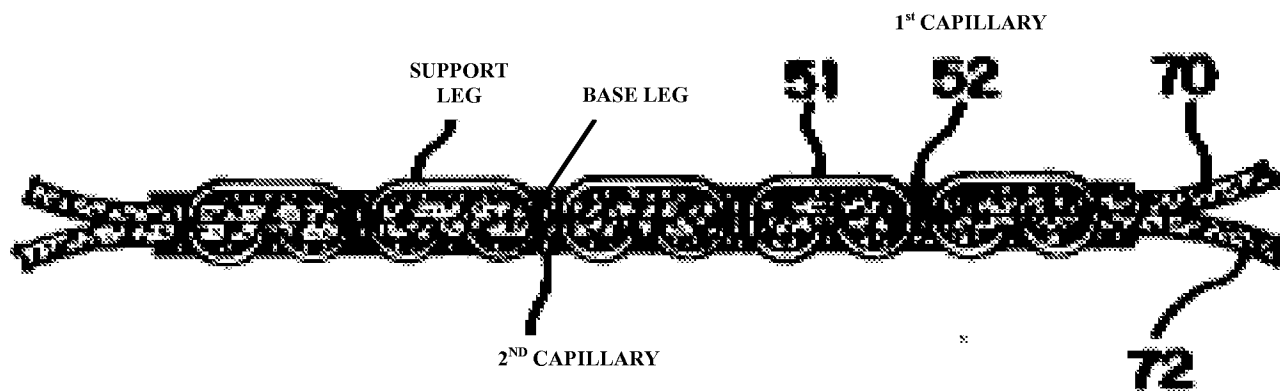
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKean et al. (USPN 6,045,560) in view of Trumbull et al. (USPN 5,263,629).

Regarding claims 6 and 8, McKean discloses a single liquid filled capillary on a base leg of a fastener. Trumbull et al. teaches a fastener that sequentially ruptures a first and second capillary 52, such that the first and second capillary 52 are on an external surface of the base leg (figure 5 - see figure 5 diagram of Trumbull et al.). It would have been obvious to one having

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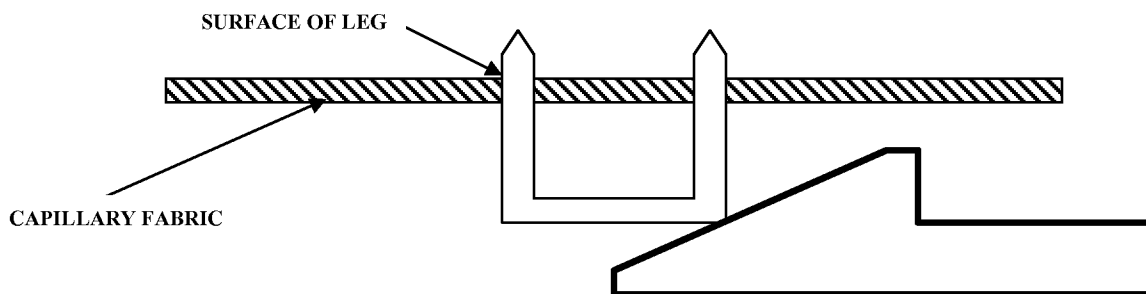
ordinary skill in the art at the time of the invention to modify the surgical fastener of McKean to include a second capillary as suggested by Trumbull et al. for the purpose of treating a second layer of tissue sutured by the surgical fastener.



### *Response to Arguments*

5. Applicant's arguments filed March 23, 2010 have been fully considered but they are not persuasive.

6. Applicant has argued that McKean et al. fails to disclose a fastener having a “capillary fixed to an external surface of at least one of the base leg or support leg”. As illustrated below, as the fastener of McKean is pushed from the cartridge, the fastener will penetrate a fabric, which is porous (thereby defining a capillary structure), such that the fabric is fixed to an external surface of a leg of the fastener.



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Applicant further argues that McKean et al. fails to teach the fabric as a liquid retaining structure. Applicant's claim language is not written in a means plus function format. As presented, the claim limitations are drawn to "a capillary fixed to an external surface of at least one of the base leg or support leg (the capillary) having a reservoir defined **therein**". Column 5 lines 1-4 of McKean et al. states the fabric may include "therein" useful substances such as drugs, enzymes and proteins. Whether the substance "therein" is liquid, gel or solid does not negate the structural disclosure by McKean et al of a capillary defining a reservoir capable of containing a substance.

Thus, Examiner maintains the rejection of Applicant's claimed invention in view of McKean.

7. With respect to the rejection of claims 6 and 8, Applicant has relied upon the teaching of Trumbull to provide a first and second capillary structure to the external surface of a fastener. Examiner hereby applies upon the same rationale of the reservoir defined structure as presented above in view of McKean et al. to address page 5 of the arguments presented by Applicant on March 23, 2010.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GLORIA R. WEEKS whose telephone number is (571)272-4473. The examiner can normally be reached on M-Th 8am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199

/PAUL R. DURAND/

Primary Examiner, Art Unit 3721

June 17, 2010

/Gloria R. Weeks/

Examiner, Art Unit 3721